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15 UNITED STATES DISTRICT COURT

16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 EASTERN DIVISION

18 JOSÉ LUIS TAPIA-FIERRO

19 Case No.: ED-CV11-1190(R)(SS)

20 Petitioner,

21 v.

22 ERIC HOLDER, Attorney General of
the United States, and JANET
23 NAPOLITANO, Secretary of United
24 States Department of Homeland
Security, ROBIN F. BAKER, Field
25 Office Director, GABRIELA
PACHECO, Assistant Field Office
26 Director, JOHNNY WILLIAMS,
Assistant Field Office Director

27 Respondents.

28 **STATEMENT OF
UNCONTROVERTED
FACTS AND CONCLUSIONS
OF LAW**

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1 I. UNCONTROVERTED FACTS

2 1. In March 2007, Petitioner José Luis Tapia-Fierro was taken into
3 immigration custody, where he remained until October 2011. (Sept. 26, 2011
4 Order Granting Motion for Preliminary Injunction, Dkt. No. 25 at 2.)

5 2. On January 5, 2011, this Court held that Mr. Tapia-Fierro was
6 “erroneously deported” in 2001 and ordered that his 2001 removal proceedings
7 be reopened so that he would have thirty days from any subsequently issued
8 removal order to appeal that order. By operation of law, Mr. Tapia-Fierro’s
9 immigration status was restored to the status he held at the time of his 2001
10 removal proceeding: that of an admitted lawful permanent resident (“LPR”). (*Id.*
11 at 1.)

12 3. On January 11, 2011, the government nevertheless lodged
13 inadmissibility charges against Mr. Tapia-Fierro under section 212 of the
14 Immigration and Nationality Act (“INA”). On February 16, 2011, the
15 Immigration Judge presiding over Mr. Tapia-Fierro’s reopened 2001 removal
16 proceedings (1) dismissed the remaining aggravated felony charge in Mr. Tapia-
17 Fierro’s 2001 removal proceeding; (2) determined that Mr. Tapia-Fierro could
18 not be subject to inadmissibility charges under section 212 of the INA because he
19 was an admitted LPR; and (3) permitted the government two weeks to assert
20 deportability charges under section 237 of the INA instead. (*Id.* at 1.)

21 4. On March 17, 2011, after being informed that the government had
22 elected not to proceed on section 237 charges, the Immigration Judge (1)
23 terminated Mr. Tapia-Fierro’s 2001 removal proceedings; and (2) after
24 conducting a bond hearing pursuant to *Matter of Joseph*, 22 I. & N. Dec. 799
25 (B.I.A. 1999), ordered his release upon the posting of \$1,500 bond, concluding
26 that the government had failed to demonstrate by clear and convincing evidence
27 that he is a danger to the community or flight risk. (*Id.* at 1.)

1 5. The government subsequently appealed the Immigration Judge’s
 2 bond order and merits decision to the Board of Immigration Appeals (“BIA”).
 3 On June 22, 2011, a panel of the BIA reversed the Immigration Judge’s bond
 4 order, holding that the Immigration Judge had no authority to change the status of
 5 Mr. Tapia-Fierro from that of an “arriving alien” to that of an admitted LPR. (*Id.*
 6 at 1-2.)

7 6. Thereafter, on August 3, 2011, a different panel of the BIA denied
 8 the government’s appeal of the Immigration Judge’s March 17 order on the
 9 merits, and affirmed the Immigration Judge’s decision to dismiss section 212
 10 charges against Mr. Tapia-Fierro, holding that Mr. Tapia-Fierro is an admitted
 11 LPR who is not subject to inadmissibility charges. (*Id.* at 2.)

12 7. On September 26, 2011, this Court granted Mr. Tapia-Fierro’s
 13 motion for preliminary injunction and ordered his release from custody,
 14 concluding that (1) Mr. Tapia-Fierro’s detention of fifty-four months constituted
 15 “prolonged detention;” (2) that section 236(c) of the Immigration and Nationality
 16 Act, under which the government purported to detain Mr. Tapia-Fierro, did not
 17 permit such prolonged detention; (3) that prolonged detention without adequate
 18 procedural protections violated the Due Process Clause of the Constitution; and
 19 (4) that the government was not likely to succeed in showing that Mr. Tapia-
 20 Fierro’s continued detention was justified even if it has asserted INA section 237
 21 charges against him. (*Id.* at 2-5.)

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23 II. CONCLUSIONS OF LAW

24 8. Rule 56(a) of the Federal Rules of Civil Procedure provides that a
 25 court “shall grant summary judgment if the movant shows that there is no
 26 genuine dispute as to any material fact and the movant is entitled to judgment as
 27 a matter of law.” Fed. R. Civ. P. 56(a).

1 9. Summary judgment is appropriate only where the record, read in the
2 light most favorable to the non-moving party, indicates that there is no genuine
3 issue as to any material fact and the moving party is entitled to judgment as a
4 matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). To demonstrate a
5 genuine issue, the opposing party must come forward with specific facts showing
6 that there is a genuine issue for trial. *Matsushita Electrical Industry Co. v. Zenith*
7 *Radio Corp.*, 475 U.S. 574 (1986).

8 10. The Court has jurisdiction over the matter at hand and the parties
9 involved. Ninth Circuit precedent suggests that the immediate custodian rule
10 does not apply in the immigration habeas context. *See Armentero v. INS*, 340
11 F.3d 1058 (9th Cir. 2003); *Armentero v. INS*, 340 F.3d 1058 (9th Cir. 2005).
12 Even if *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), does apply in the immigration
13 habeas context, this Court has personal jurisdiction over the immediate custodian
14 named as a respondent, Johnny Williams. Mr. Williams is the Assistant Field
15 Office Director of the El Centro, California, facility in which Mr. Tapia-Fierro
16 was detained and is domiciled in California. Thus, this Court's exercise of
17 personal jurisdiction over Mr. Williams is proper under the traditional tests of
18 personal jurisdiction, domicile and presence, or because of minimum contacts.
19 *See Milliken v. Meyer*, 311 U.S. 457 (1940); *Int'l Shoe Co. v. Washington*, 326
20 U.S. 310 (1945).

21 11. No material facts remain in dispute in this action. Mr. Tapia-
22 Fierro's prolonged detention is not permitted under either section 236(c) of the
23 INA or the Due Process Clause of the Constitution, regardless of whether the
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1 12. government has asserted INA section 237 charges against him. Mr.
2 Tapia-Fierro is entitled to judgment as a matter of law.

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5 SO ORDERED.

6 DATED: Jan. 23, 2012



7
8 HON. MANUEL L. REAL
9 UNITED STATES DISTRICT JUDGE

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